



December 8, 2020

Attention: EAModernization.MECP@ontario.ca

Dear MECP EA Modernization Team:

Re: Follow-up Recommendations on Bill 197 & EAA Amendments

Introduction

The Ontario Association for Impact Assessment (OIAA) is a volunteer forum comprised of impact assessment (IA) practitioners for advancing innovation, development and communication of best practices in impact assessment for the betterment of all Ontarians. OIAA accomplishes this through the exchange of ideas and experiences amongst its members, with responsible authorities and decision-makers, and with other organizations with comparable interests. The OIAA promotes the development of local, provincial, national and global capacity for the application of IA in which science, public engagement and participation, and the rights and responsibilities of Indigenous Peoples are advanced, providing a planning foundation leading to sustainable development.

In August 2020, we submitted preliminary comments (attached as Schedule A) in response to the Ministry of the Environment, Conservation and Parks' (MECP) request for public comment on certain aspects of the Ontario Government's overhaul of the Environmental Assessment Act (EAA). We also noted that the OIAA would provide the MECP with further comments and recommendations following the hosting of three webinars scheduled in the fall of 2020.

Three-Part Webinar Series

The OIAA hosted three webinars in November examining Ontario's assessment laws and policies through time, lessons learned, and recommendations for the future. Expert panelists for each webinar focused on the EAA, specifically, history and trends, what has been enacted, what is missing and needed, and what should be done going forward.

Webinar 1: The History of EA in Ontario and the Path Forward

Attached as Schedule B is a report setting out the highlights of Webinar 1. The webinar discussion centered on Bill 197, describing key amendments to the EAA and providing a retrospective look at EA in Ontario. The three panelists presented their views on the following five key themes: (i) purpose of the EAA; (ii) the need to maintain alternatives assessment as a component of EA; (iii) the importance of public and Indigenous engagement in EA; (iv) Indigenous-led EA; and (v) the Project List. The following recommendations on the path forward emerged from the discussion:

1. Apply current planning law that demands consistency with provincial policy statements and plans— in particular, section 3(5) of the Planning Act - to all government decisions on Ontario EAs.

2. Alternatives assessment should be maintained in all EAs – individual, streamlined and strategic.
3. Build in meaningful Indigenous consultation and engagement provisions into the EAA
4. Allow for Indigenous led EAs in the EAA (they will come regardless) and ensure they are considered in decisions.
5. Provide a participant funding regime comparable to the one established under the Intervenor Funding Project Act in the late 1980s.
6. Expand the Project List to include regional and strategic EAs.
7. Add mining projects to the provincial Project List along the lines of the federal Project List, but with lower thresholds to cover regionally significant projects, not just nationally significant projects.
8. Provide for greater coordination/harmonization both within the provincial government and between the provincial, federal and Indigenous governments to avoid duplication of EA processes.

Webinar 2: What is Needed & Missing Based on Bill 197 Amendments to the EAA

Attached as Schedule C is a report setting out the highlights of Webinar 2. The discussion produced the following three broad conclusions.

Meaningful Indigenous Engagement

Indigenous engagement under the EAA and the proposed modernized environmental assessment process is less than ideal. To begin to mitigate this, Indigenous communities must be recognized as equal partners alongside proponents and must be recognized as self-governed communities with the ability to provide or withhold consent as it relates to the approval of a project. To do so, consistent and sufficient resources must be accessible to Indigenous communities to allow for collaboration and meaningful engagement throughout the EA process and allow for well-informed decision making at the end of the project.

Regional Impact Assessments

The environment assessment process currently does not provide adequate emphasis on the need for regional impact assessments in environmentally valuable and sensitive areas. The involvement of Indigenous communities and provincial/territorial/federal governments is critical to facilitating the progression of regional impact assessments that are credible and authoritative, technically sound and complete, and have the perspectives and goals of each jurisdiction given the social-ecological context of the region.

Climate Change

The current and proposed EA process excludes the importance of cumulative effects assessment as it relates to climate change. Currently, projects are viewed exclusively on their individual environmental impacts to an area; when in actuality, there is more than impacts to conditions, including climate change impacts. To conduct a cumulative effects assessment, the past conditions of the environment, the impacts of each stressor in the environment (i.e. positive, negative, and their interaction with each other), the impacts the project will have on climate change, and the impact of climate change on the project will all need to be considered and used to predict the cumulative impacts of a given project on a region and thus whether a project should be approved.

Webinar 3: What is Next re: the EAA?

Attached as Schedule D is a report setting out the highlights of Webinar 3. This webinar considered elements of EA modernization (Comprehensive Project List Regulation, Streamlined/Class and Sectoral EAs) through panel presentations and discussion organized by sector, as follows:

- Energy/Power
- Transportation/Roads
- Water/Wastewater
- City Building

Sector-based recommendations for the Comprehensive Project List from this webinar informed our submission to MECP previously and is repeated here as Schedule E. The following conclusions on Class EAs were made based on the discussion.

- Across all sectors discussed (waterpower, transportation/roads, water/wastewater, city-building) proposed changes to Class EAs were related to reclassifying project types according to environmental risk. There is a general trend towards less requirements for projects with lower risks.
- Generally, some reclassifications and efficiencies made sense, while the clarification to the categorization of project types was an improvement in the proposed Class EA changes.
- Concerns included making sure the thresholds and requirements are clear and consistent across sectors and with other jurisdictions (e.g., with Canada, as applicable) and are based on likely impacts to the environment.
- Concerns also included the potential increased reliance on downstream permits/approvals (e.g., environmental compliance approvals) and construction notices.
- Frivolous “bump-up” requests should be discouraged, but the changes to the Class EA Part II Order process may be too limited (i.e., requests will only be considered if related to impacts on Aboriginal or treaty rights or provincial interest).
- An issues resolution process sounds good in theory, but it is largely up to the proponents and the practitioners to make it work.
- A dispute resolution process could be more effective and time/cost efficient than a Part II Order or “bump-up” request.

Project List

The MECP asked for recommendations regarding the proposed Project List. The OAIA provided a detailed list of recommendations under separate cover. However, for ease of reference, they are attached as Schedule E.

Conclusion

The foregoing comments and recommendations are intended to facilitate informed, robust planning that achieves the EAA purpose of decisions that really do lead to betterment for all Ontarians. We look forward to ongoing meaningful dialogue and engagement with the MECP and other stakeholders regarding improvements to the EAA and EA practice in Ontario.

Respectfully submitted,



President, Ontario Association for Impact Assessment

Cc: Annamaria Cross (annamaria.cross@ontario.ca)
Ross Lashbrook (ross.lashbrook@ontario.ca)

Document #: 1859158

SCHEDULE A

August 27, 2020

Attention: EAModernization.MECP@ontario.ca

Dear MECP EA Modernization Team:

Re: The Ontario Association for Impact Assessment's Response to MECP re Bill 197

Introduction

The Ontario Association for Impact Assessment (OIAA) is a volunteer forum comprised of impact assessment (IA) practitioners for advancing innovation, development and communication of best practices in impact assessment for the betterment of all Ontarians. OIAA accomplishes this through the exchange of ideas and experiences amongst its members, with responsible authorities and decision-makers, and with other organizations with comparable interests. The OIAA promotes the development of local, provincial, national and global capacity for the application of IA in which science, public engagement and participation, and the rights and responsibilities of Indigenous Peoples are advanced, providing a planning foundation leading to sustainable development. We are submitting preliminary comments as board members of OIAA in response to the Ministry of the Environment, Conservation and Parks' (MECP) request for public comment by August 22, 2020.

Context and Background

OIAA has been engaged with the process to modernize Ontario's Environmental Assessment Act (EAA) since 2015. During the 2015 OIAA Annual Conference, the then Ontario Minister of the Environment and Climate Change challenged OIAA to solicit member views and collate responses into a brief outlining the issues and challenges associated with the EAA and its application to address how Ontario could obtain better economic and social outcomes. Following the 2015 OIAA Conference, a working group of senior EA practitioners prepared a response to the Minister's challenge and solicited OIAA member input through a May 30, 2016 workshop. A document entitled "*Environmental Assessment Program in Ontario: Is it Time to Hit the Reset Button?*" (Reset Button Paper) summarizes those deliberations and was delivered to the then Minister on October 21, 2016. This document was resubmitted on March 9, 2017 along with a set of observations from sessions at the October 2016 OIAA Annual Conference which focused on modernization of the EAA.

On July 8, 2020, the Ontario Government proposed an overhaul of EAA as part of the [COVID-19 Economic Recovery Act, 2020](#) (Bill 197). The *COVID-19 Economic Recovery Act, 2020* received Royal Assent less than two weeks later on July 21, 2020. Most of the amendments to the EAA took effect on a day to be proclaimed by the Lieutenant Governor. It is important to note, however, that the purpose of the EAA continues to be for the betterment of the people of Ontario by providing for the protection, conservation and wise management of the environment.

Preliminary OAIA Comments

1. In general, the OAIA is concerned that the current changes to the EAA were introduced and received Royal Assent in the space of a few weeks in the summer when most Ontarians were and are focused on other matters. In order to provide the MECP with the views of the OAIA membership, we are planning to host two or three webinars in October 2020 that will involve a review of key amendments of the EAA.
2. The second observation that OAIA can make at this time is that there are number of improvements that can be undertaken by the MECP that do not require or draw on amendments to the EAA as noted in the Reset Button Paper:

“There was general agreement amongst participants at the workshop that most problems and opportunities arise not from the EA Act itself but rather from how the process is practiced and how it is administered by proponents, review agencies and by the MOECC [now the MECP]. OAIA encourages MECP to build its accountability as the regulator. The lack of seasoned, experienced, senior EA practitioners as Project Officers at the Environmental Approvals Branch was noted as a significant issue. Improvements to the hiring of experienced, knowledgeable MECP staff and their ability and willingness to provide strategic EA guidance to proponents, respond to complex issues, address consultation concerns, deal with Part II Order Requests, respond to questions about level of detail required in EA studies, scoping, etc. is a noted suggestion.” (pages 5 and 6)

The Reset Button Paper goes on to provide the following suggested improvements to enhance the efficiency and timeliness of EA:

- Revise MECP review timelines under Ontario Regulation 616/98, Class EAs and streamlined EA regulations, even if it means taking a bit more time to make them more reasonable, so that they can be met with greater certainty;
- Promote and enforce MECP adherence to timelines to ensure they are respected;
- Consider creation of a frivolous and vexatious provision to reduce or eliminate insincere or unwarranted objections which hold up valued projects;
- Provide opportunities for MECP staff to participate early and meaningfully in reviews of Class EA studies;
- Upgrade hiring practices and restructure MECP review staff groups to ensure that there are seasoned staff who have relevant, hands-on EA experience and can share it across various groups. For example, staff who have written and managed EA studies or worked for one of the review agencies on EA studies would be invaluable;
- Provide sufficient budget to train MECP staff, proponents, review agencies and practitioners in all aspects of EA Planning and MECP expectations;
- Provide funding for participation in the EA process;
- Provide additional support to stakeholders involved in EA studies to allow for increased sharing of information early in the EA planning process with a focus on reducing or eliminating unnecessary objections; and
- Foster senior MECP staff who will champion good EA practice and act as a senior resource for staff while improving efficiency of the EA program. (page 9)

With the exception of timeline amendments, none of the foregoing recommendations require legislative amendment.

3. With respect to timeline amendments, we note that the MECP is proposing that the Terms of Reference (ToR) phase be reduced from 24 months to 6 months. Given the regulated timeline for government review of a ToR is 4 months, 2 months seems insufficient to undertake the necessary consultation with the public, stakeholders, and Indigenous communities.
4. The OAIA also notes that sectoral EAs were tried back in the 1990's. The lack of analysis and "lessons learned" from this effort is glaring. To the knowledge of the OAIA board members and senior EA practitioners, those sectoral EAs were not well used and were not helpful in "streamlining" EAs in Ontario.
5. The OAIA also understands that the MECP often cites delays in receipt of comments from Indigenous communities as the rationale for delays in reviews. We recommend MECP identify the supports that should be put in place to support communities in meeting revised timelines and develop procedural requirements or minimum standards for IA consultation with Indigenous communities. While electronic submission processes and online registries may be useful, they should not be a substitute for comprehensive public and Indigenous consultation on IA. In some cases, access to computers and broadband are limitations to enabling participation, particularly in rural and northern Ontario.
6. The Government has amended the EAA to require proponents of new, large landfills (i.e. those that require an individual (comprehensive) EA) to obtain support from 1) host municipalities and 2) adjacent municipalities where there is land with authorized residential uses that is within a 3.5km distance (or such distance as may otherwise be prescribed) from the proposed new landfill site property boundary.

In our view, these requirements are both arbitrary and unclear. For example, it is unclear as to how the Provincial government or any project proponent will define municipal support with respect to landfill projects (including where there is no municipal authority) and at what point in the process this will need to be achieved and how it is to be maintained. Past experience with these types of efforts suggest they are quite time consuming and may in fact drive timelines for the rest of the process. An examination of the Adams Mine project, a 'willing host' for Toronto's waste, serves as an example of the pitfalls associated with achieving and maintaining municipal support for a waste project.

Further, the act of siting large landfill sites in Ontario will now tend to be a political process rather than one based on science and other relevant factors. Landfills will not be sited in suitable physical locations in compliance with Ontario's own modern landfill design standards, but rather on the basis of political and perhaps, monetary influence that is not linked to impacts and benefits of proposed projects.

It is also likely that stakeholders will demand that the same municipal consent requirement be applied to other controversial projects such as transmission lines, generating stations, sewage treatment facilities, and major transportation infrastructure.

7. The current approach to modernizing the EAA does not adequately address the rights and responsibilities of Indigenous Peoples. When the EAA was enacted and revised, it did not contemplate the specific needs around consultation with Indigenous Peoples and therefore has not provided any guidance for addressing Indigenous Peoples' concerns which are both foundational and fundamental to the EA Program. Today, projects must consider the relationship between proponents, the Crown and Indigenous Peoples. These considerations extend to the implementation of the "Truth and Reconciliation Commission of Canada: Calls to Action" as well as the United Nations Declaration on the Rights of Indigenous Peoples.

The current IA process/practice did not anticipate and, in its current form, does not facilitate the meaningful involvement of Indigenous Peoples. This must be addressed if better social and economic outcomes are to be achieved for both Indigenous Peoples and proponents. The OAIA suggests that B.C. legislation is a good example of what Ontario should consider in this regard.

8. The Reset Button Paper notes that since the EAA was enacted in 1976 and revised in 1998, a number of relevant issues have emerged as vital to the EA program. The following issues are no longer “emerging” and need to be incorporated into EA practice and MECP guidance:
 - a. **Sustainability:** When and how is it appropriate in the EA process to use greater sustainability as a goal? The OAIA recommends that this goal be incorporated as part of the “betterment” purpose set out in the EAA;
 - b. **Climate Change:** When and how should climate change considerations be included when evaluating projects in an EA study?
 - c. **Cumulative Effects Assessment:** where in the EA program is the appropriate place for consideration of cumulative effects? Should this be on a regional basis, such as an air shed, or on an individual project level or for both? Is it reasonable to expect a proponent to have access to all of the information required to make a meaningful assessment to inform a cumulative effects assessment?
 - d. **Participant Funding:** How could a program of participant funding be initiated on a fair basis to serve the various needs of stakeholders, Indigenous Peoples and other participants in EA projects, and regional assessments?
 - e. **Strategic Environmental Assessment:** What can be learned from other jurisdictions and their use of strategic EA process to address plans, programs, groups of “big picture” projects or new initiatives that may have socio-economic and/or environmental impacts?

The OAIA’s comments underscore the fact the EAA and EA practice are intended to provide the best planning for projects thereby avoiding significant adverse environmental and socio-economic effects. EA is not simply a process hurdle to be cleared. EA should not be regarded as an extra cost or expense in project development, but rather as a sound investment in informed planning and decision making leading to the betterment of all Ontarians.

The OAIA will provide the MECP with further comments following our webinars scheduled for October 2020. We look forward to ongoing meaningful dialogue and engagement with the MECP and other stakeholders regarding improvements to the EAA and EA practice in Ontario.

Respectfully submitted,



Charles J. Birchall
President (Acting), Ontario Association for Impact Assessment

Cc: Annamaria Cross (annamaria.cross@ontario.ca)
Ross Lashbrook (ross.lashbrook@ontario.ca)

Document #: 1799941

History of EA in Ontario and the Path Forward: Webinar 1¹

Thursday, November 5, 2020 at 12:00 pm to 2:00 pm EST

Facilitators: Charles J. Birchall and Beth Williston

Panelists: Robert Gibson, Rod Northey, Caroline Coburn

Rapporteur: Rebecca D'Onofrio

Webinar Highlights:

The OAI is pleased to welcome three eminent panelists to the first webinar of the 2020 webinar series: Bob Gibson, Rod Northey, and Caroline Coburn. The webinar discussion centered on Bill 197, setting out amendments to Ontario's *Environmental Assessment Act* (EAA), and a retrospective of EA in Ontario. The three panelists presented their views on the following five key themes: (i) purpose of the EAA; (ii) the need to maintain alternatives assessment as a component of EA; (iii) the importance of public and Indigenous engagement in EA; (iv) Indigenous-led EA; and (v) the Project List. Recommendations on the path forward for EA in Ontario were made.

Purpose of EAA

Dr. Gibson noted that the purpose of EAA is for “the betterment of the people ... of Ontario by providing for the protection, conservation and wise management in Ontario of the environment”, which encompasses biophysical aspects of the environment along with social, economic and cultural aspects, and their interrelationships. Though the concept of sustainability has not been expressly written into the EAA, the purpose of EA encompasses it with the goal of the betterment of the people of Ontario.

EA was not intended to be a glorified licensing/permitting process, but is intended to lead to better planning and decision-making with three key components – attention to broadly defined environmental considerations, alternative ways of serving the purposes of the project, and transparent decision-making with public scrutiny. Regrettably, over the years, EA has been reduced to a routine box-checking exercise that is haphazardly applied. Improving EA in Ontario does not require further amendments to the EAA, but rather should be focused on consistent application of the EAA's purpose as noted above.

Mr. Northey noted that the government's stated purpose of EA modernization was as follows: (i) aligning the degree of project risk with the scope and scale of the EA; (ii) eliminating duplication between regulatory processes; (iii) improving EA timelines; and (iv) going digital.

¹ <https://oia.on.ca/history-of-ea-in-ontario-and-the-path-forward/>

However, the method by which EA is supposed to achieve its purpose is through application of objective criteria and planning. Mr. Northey commented that instead of applying established criteria under Ontario provincial policy, EA is frequently conducted in a subjective way with arbitrary criteria that have no connection to such instruments as Ontario's provincial policy statements. In as much as Ontario EA has failed to deliver objective planning, it is failing to deliver on the purpose of the EAA which, as Dr. Gibson stated, is the betterment of the people of Ontario. Ontario EA must be grounded in provincial policy.

Ms. Coburn reminded registrants that coming out of 2015 OAIA conference, working groups were struck to develop recommendations for modernizing EA². The main outcome of the work was that while reforms were needed in how EA is practiced in Ontario, there was no need to significantly overhaul the EAA. Five key themes for enhancement and improvement of EA were identified together with a number of recommendations. These were sent to the Ministry of the Environment and Climate Change (as it then was called) for consideration. While a few of the recommendations were included in Bill 197, others were not picked up, such as the need to improve involvement of Indigenous peoples in EA as well as the need for more regional and strategic assessments, and assessment of cumulative effects.

The panel agreed that that it may be best to amend the purpose of EAA to replace "betterment" with "sustainability" because it puts emphasis and focus on the long-term impacts of projects. However, any rational assessment based on "betterment" should be essentially the same as a sustainability-based assessment. The main problem is in the way the EAA is interpreted and practiced, and not in the wording of the legislation.

Bill 197 and Increased Efficiency and Effectiveness in EA regime

One of the stated purposes of Bill 197 is to increase the efficiency and effectiveness of EA in a post-Covid-19 recovery. The challenge remains as to how to ensure efficiency serves the effectiveness of EA in achieving the purpose of EA, including alternatives assessment. The panel agreed that while the need for efficiency in EA is important, the test of efficiency should not be how quickly a regrettable project can receive approval. There should be sensible planning at the outset so that projects can then progress in a timely fashion through the EA process. Projects that would not be approved under a rigorous EA regime should not be fast-tracked to "yes" in the name of increased efficiency. The objective of the EA process should be proper planning leading to the approval of good projects that have been chosen from a range of well-considered alternatives.

Ms. Coburn reminded participants that meaningful consultation with Indigenous communities cannot be ignored in the name of efficiency. To do so will inevitably result in court cases and lost time.

The Case of Ontario Hydro's 25 Year Demand/Supply Plan

In order to highlight some of the key points being raised, the panel briefly discussed the Ontario Hydro 25 Year Demand/Supply Plan (DSP) issued in 1989. At the time, Ontario Hydro agreed to undergo a Planning Level Assessment that resulted in an EA panel hearing. Following extensive examination of the DSP including evidence and witnesses from Ontario Hydro and registered parties, Ontario Hydro elected to withdraw the DSP from further consideration by the panel. While there are differing views on the matter,

² https://3dh9gq1j5l8d3wypaz220tin-wpengine.netdna-ssl.com/wp-content/uploads/2020/11/Environmental-Assessment-Program-in-Ontario-Is-it-Time-to-Hit-the-Reset-Button_Webinar-I-2020_OAIA.pdf

Dr. Gibson noted that the hearing represented a positive outcome of a strategic level assessment, which resulted in tens of \$billions in taxpayer savings.

It was noted that parties were able to properly prepare for and participate meaningfully in the hearing due to the allocation of funding under the then *Intervenor Funding Project Act*. Parties were able to retain experts to review and comment on the DSP. The panelists agreed that the failure of Bill 197 to provide for a similar funding regime is significant omission.

Mr. Northey reiterated the importance of needing objective planning criteria in EA, and pointed out that though the DSP EA was a success, Ontario Hydro used subjective criteria with no planning framework in the preparation of the DSP. The panel agreed that the development of provincial policies is critical, and to be effective they must be in place prior to EA. The panel also indicated that lack of clear planning policy is a problem at all levels of EA, not just at the provincial level.

Regarding provincial policy, the panel discussed the history of land-use planning and provincial policy in Ontario. In the 1980s a system of provincial policy was developed, but it was not a comprehensive system. In the early 1990s, a framework of comprehensive provincial policy was developed and it became a requirement that decisions in planning and EA needed to be consistent with the policy framework. By the mid to late 1990s, the requirement that decision makers had to make decisions consistent with provincial policy was lost. The current system allows for poorly guided EAs and EA decision making, with no need for consistency with provincial policy. The GTA West EA was cited as an example of this issue.

The panel further discussed the inadequacy of planning policy in respect of Northern Ontario. Ms. Coburn pointed out that even though the Growth Plan for Northern Ontario was designed as a strategic framework to guide decision-making and investment planning in Northern Ontario, it was developed without meaningful consultation with and engagement of Indigenous groups and communities.

Indigenous Led EA

Ms. Coburn stated that there is an increasing desire from Indigenous groups to develop their own EA processes, and these are increasingly being conducted in various ways by Indigenous groups in other jurisdictions in Canada. EA is a rare opportunity to start a dialogue about co-decision-making and co-management of lands and resources. Bill 197 failed to capitalize on the opportunity and bring to ground Canada's commitment to operationalize the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)³ as has been done in recent amendments to the federal Impact Assessment Act⁴ and the BC Environmental Assessment Act⁵. The recent amendments to the Ontario EA Act do little to facilitate the meaningful involvement of Indigenous Peoples and do not recognize UNDRIP. Further changes are anticipated to the Consultation Code of Practice, which must be done with the full participation of Indigenous groups in Ontario. The lack of required consultation on Bill 197 has resulted in court challenges from Indigenous groups and has set back any progress on reconciliation on the part of the Ontario government. More needs to be done to recognize the future of EA with full Indigenous involvement in decisions and management, to move reconciliation forward, to provide for better social and economic outcomes for affected Indigenous Peoples, and to deliver greater clarity of expectations for project proponents.

³ <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

⁴ <https://laws.justice.gc.ca/eng/acts/l-2.75/index.html>

⁵ <https://www.bclaws.ca/civix/document/id/complete/statreg/18051>

The panel also briefly discussed the UNDRIP, and how it should be a source of policy reform for Ontario EA.

Project List

With regards to the Project List, opinions of the panel members varied. Mr. Northey reiterated that the Project List appears to have been amended using subjective criteria, and that the changes were not grounded in Ontario policy. For example, despite the theme of modernization and elimination of duplication between the Federal and Provincial EA, mining was included as a possible addition to the Project List.

Dr. Gibson noted that one apparent aim of the EA Act changes is to limit major project assessments to a select number of chosen areas, and to enable reduced application to smaller undertakings under the class assessment processes. However, it is not clear that the changes are based on careful analysis of applications most likely to serve “betterment” for the people of Ontario. For example, there is no evident attention to applications at the strategic and regional level. At a minimum, the application of the Act should be expanded to include strategic environmental assessments, regional environmental assessments as well as to projects and the smaller classes of undertakings that may have significant sustainability effects.

Ms. Coburn noted that OAIA members provided input on what types of undertakings should be subjected to EA in the workshop held in 2015 and encouraged OAIA members, if they intend on commenting on the Project List, to review these suggestions for guidance.

Question and Answer Session

Question: What in your opinion is a “good” project?

The panel’s response was that a “good” project is one that is consistent with provincial policy including provincial policy statements. However, the policy suite that we currently have is inadequate. For example, we must be clearer about what “betterment” means. In addition, comparative evaluation of alternatives with explicit criteria would lead to much better undertakings. In addition, a “good” project is one that takes into account sustainability – that will serve the needs of people today as well as future generations.

Question: MECP is currently asking for comments on the inclusion of mining on the proposed Project List. How would you respond to this request? What are the good and bad implications of simply copying the federal Project List into the Ontario context?

Mr. Northey commented that mining is complicated, in that under the resource provisions of the Constitution mining should be a provincial responsibility. Therefore, it is odd that Ontario has never required mining projects to be provincially assessed. However, mining is on the federal Project List because of the potential impacts to fisheries among others. The panel was in agreement that mining should also be on the provincial Project List given its environmental implications, but there should be a federal/provincial accord to avoid duplication of EAs.

Dr. Gibson added that in many mining cases, there is also Indigenous jurisdiction that must be considered. The problem is not really jurisdictional duplication, but inconsistency of requirements placed on proponents by different jurisdictions, and the historical failure of jurisdictions to cooperate as they should.

There needs to be discussion about how to jointly ensure adequate assessments of mining. Ms. Coburn reinforced the need to have one body of evidence that supports two or more processes, and that there should be harmonization between the processes to remove duplication.

Question: I appreciate the emphasis on subjective and objective planning for IA. What in your opinion are the relevant policy mechanisms for the far north in Ontario? Are there different tests for the northern part of the province in terms of objective vs. subjective in the north vs. near north vs. south of the province? More broadly, should IA look differently in the provincial north?

Mr. Northey reiterated Ms. Coburn's point that the distinguishing feature of the north is the Indigenous population. There continues to be a failure to adequately engage Indigenous communities in land use planning processes and EA. There is an expectation that in the North, Indigenous communities will garner greater engagement and control through co-management mechanisms. Ms. Coburn also pointed out that there are similar Indigenous concerns in Southern Ontario and that land use planning and EA practice need to recognize the existence of treaties, Aboriginal and inherent rights throughout all of Ontario.

How can we as practitioners and regulators ensure that EA is applied to its highest power despite the changes to the legislation?

Planning is not affected by this new legislation. Reforms in planning should have begun long before now. Hopefully, there will be guidance on the EAA that will lead to improvements in how EA is being practiced every day, without the need for further changes to the EAA.

Dr. Gibson repeated that there is no reason that responsible authorities can't insist on an assessment of a proper range of alternatives under the current legislation. Evaluation of alternatives is the core of better decision-making.

Mr. Northey commented that in relation to the new EAA, one of the important omissions is that there are no minimum standards as to what constitutes a streamlined assessment. All such requirements for a streamlined EA have been deferred to regulations.

The Bill has been passed. What advice do panelists have on implementing it to achieve the objectives they are discussing?

The panel agreed that this has been answered during the earlier discussion, with the emphasis on alternatives. Dr. Gibson reiterated that there is nothing in the legislation that precludes doing more strategic assessment, though it is not clearly mandated. In addition, the law doesn't preclude intervenor funding. Many of the most valuable participants are those that require funding and capacity building. These items have been made more difficult, but have not been precluded by changes to the EAA. Ensuring that alternatives assessment remains during any new streamlined approach is critical. It was reiterated that streamlining is meant to add to the overall effectiveness of the law, it is not meant purely as an efficiency exercise. Ms. Coburn also indicated that there will be revisions to the code of practice on consultation, so there remains an opportunity to improve Indigenous consultation requirements.

Question: Why is strategic IA so difficult to bring to the policy and planning practice in Ontario? Are other jurisdictions using SIA or SIA like approaches?

Strategic EA is difficult because it is at a level of broad policy that the decision-makers think is their realm. Assessment's role is to have better substantive decisions but also to inform people about what alternatives were assessed and why the chosen alternative was better than the others. The learning function of EA is therefore important. The panel touched on the importance of data collection, including traditional knowledge. Good baseline data collected over a long period of time will lead to better policies and decisions. It was also noted that other jurisdictions have already adopted Strategic EAs and regional planning frameworks. Ontario is late to the game. There is a requirement for strategic EAs focused on alternatives in the United States and EU regimes.

Question: We've had broad policy commitments to reverse climate change and biodiversity loss for many years, but despite EAs becoming more sophisticated, we haven't reversed those trends. How can we do better?

The panel responded that many of the biodiversity problems are cumulative, and that project-by-project assessment is rarely adequate to identify and mitigate the severity of additional negative effects. Cumulative impacts are not addressed by this type of assessment. Regional and strategic attention is needed to address impacts to biodiversity. There is a need for very clear policy guidance and a framework on these matters. There seems to be no sustained political will to tackle biodiversity issues in this manner and to set thresholds.

Question: What constitutes a good EA that encompasses betterment plus sustainability considerations?

The assessment has to consider impacts to people who will be affected. The alternatives analysis must be clear, and must be presented for public scrutiny.

Recommendations

1. Apply current planning law – in particular, section 3 of the Planning Act - to all Ontario EAs
2. Alternatives assessment should be maintained in individual as well as strategic EAs
3. Build in meaningful Indigenous consultation and engagement provisions into the EAA
4. Allow for Indigenous led EAs in the EAA (they will come regardless) and ensure they are considered in decisions.
5. Provide a participant funding regime comparable to the one established under the Intervenor Funding Project Act in the late 1980s
6. Expand the Project List to include strategic EAs, regional EAs as well as classes of smaller undertakings that may have significant adverse sustainability effects
7. Add mining projects to the provincial Project List along the lines of the federal Project List
8. Provide for greater coordination/harmonization both within the provincial government and between the provincial, federal and Indigenous governments to avoid duplication of environmental assessment processes.

Webinar Resources:

Environmental Assessment Program in Ontario: Is It Time to Hit the Reset Button?

https://3dh9gq1j5l8d3wypaz220tin-wpengine.netdna-ssl.com/wp-content/uploads/2020/11/Environmental-Assessment-Program-in-Ontario-Is-it-Time-to-Hit-the-Reset-Button_Webinar-I-2020_OAIA.pdf

Minister's Challenge: Improve EA Planning in Ontario.

https://3dh9gq1j5l8d3wypaz220tin-wpengine.netdna-ssl.com/wp-content/uploads/2020/11/Ministers-Challenge-Improve-EA-Planning-in-Ontario_Webinar-I-2020_OAIA.pdf

What is and is Not Modernized in Ontario's Re-write of its EA Act

https://3dh9gq1j5l8d3wypaz220tin-wpengine.netdna-ssl.com/wp-content/uploads/2020/11/What-is-and-is-not-Modernized-in-Ontarios-Re-write-of-its-EA-Act_Webinar-I-2020_OAIA.pdf

Fulfilling the Promise: Basic Components of Next Generation Environmental Assessment

https://3dh9gq1j5l8d3wypaz220tin-wpengine.netdna-ssl.com/wp-content/uploads/2020/11/Fulfilling-the-Promise-Basic-Components-of-Next-Generation-Environmental_Webinar-I-2020_OAIA.pdf

Recent Experience with Indigenous-led Assessments: A BC Perspective

https://3dh9gq1j5l8d3wypaz220tin-wpengine.netdna-ssl.com/wp-content/uploads/2020/11/Recent-Experience-With-Indigenous-Led-Assessments-A-BC-Perspective_Webinar-I-2020_OAIA.pdf

2020 Webinar Series

The 2020 Ontario Association for Impact Assessment (OAIA) conference was being replaced with a series of webinars on **Modernizing Ontario's Environmental Assessment Legislation – The Past, Present and Future**. The webinar series is in response to Ontario's recent proposals to modernize its *Environmental Assessment Act* (EAA). The series examined Ontario's assessment laws and policies through time, lessons learned, and recommendations for the future. Expert panelists focused on EAA, specifically, history and trends, what is enacted, what is missing and needed, and what is next.

Webinars were held from **noon to 2 pm on November 5, 12, and 19, 2020**

For more information visit the OAIA website at <https://oaia.on.ca>. If you have any suggestions for next year's conference theme, please contact us at info@oaia.on.ca.



What is Missing and Needed Based on Bill 197 Amendments?¹

Thursday, November 12, 2020 at 12:00 pm to 2:00 pm EST

Facilitators: Cheryl Chetkiewicz and Tomasz Wlodarczyk

Panelists: Jordan Bean, Dayna Scott, Lorne Greig

Rapporteurs: Sandy Nairn, Nadia Dabagh

Webinar Highlights:

The OAIA welcomed three panelists to the second webinar of the 2020 webinar series: Jordan Bean, Professor Dayna Scott, and Lorne Greig. This webinar was focused on what is missing and needed in Impact Assessment (IA) based on Bill 197 Amendments. The three panelists presented their views on following themes: (i) Role of Indigenous communities in IA; (ii) Regional Impact Assessments (e.g., Ring of Fire); and (iii) Cumulative Effects Assessment and Climate Change. Tomasz Wlodarczyk presented the OAIA's recommendations in 2016 and 2017 on these issues.

Role of Indigenous Communities in IA

Ms. Bean described collaborative impact assessment with Indigenous Peoples and the concept of braided collaboration. She highlighted the evolution of Indigenous engagement in impact assessment in Canada, the rise of collaborative environmental assessment, elements of braided collaboration, and implications for Ontario's Environmental Assessment Act (EAA). She had the following reflections on Indigenous collaboration:

- Indigenous engagement and Indigenous collaboration are not explored in the new amendments
- Streamlining and exemptions will limit Indigenous participation
- The amendments are not an ideal foundation for collaborative impact assessment
- Ontario is updating its consultation guidance and this could include Indigenous partnerships, binding agreement, funding, considering Indigenous knowledge, and address consent

Regional Impact Assessment

Professor Scott described her research with partners, including Neskantaga First Nation and the regional and strategic assessment under the federal Impact Assessment Act (IAA) and the regional assessment for the Ring of Fire. She used this case study to highlight what the current situation is around the road projects as well as reflect on how Ontario could be engaged. Professor Scott had the following reflections on regional assessment as it relates to the Ring of Fire:

- Addressing cumulative impacts in the Ring of Fire needs to consider watersheds

¹ <https://oaia.on.ca/what-is-missing-and-needed-based-on-bill-197-amendments/>

- Ongoing social emergencies and the lack of commitment by governments to addressing basic services and rights in communities, including as a result of COVID-19
- Individual projects need to be tiered with regional assessment to support planning and governance in the region
- Proposed model for the Ring of Fire regional assessment would be more effective and credible if Ontario was included in a tripartite structure and agreement
- Enabling communities to come together to identify an Indigenous Governing Authority and encouraging agreements outside of legislation for an Indigenous Governing Authority as partner jurisdiction in the regional assessment
- IAA enables opportunities for joint decision making, tiering with project-level assessments, and positive contribution to sustainability and climate test; all would enable best practice with Ontario on these issues

Cumulative Effects Assessment and Climate Change

Mr. Greig's presentation focused on expanding the capacity of IA to protect the environment while advancing development. He noted that the two functions of IA have been in opposition and provided an example in the form of the Mackenzie Gas Project across the Northwest Territories which included 3 natural gas anchor field, a 1,196 km pipeline, and an Indigenous development opportunity near Colville Lake and shared the scenario submitted by the proponent against the scenario developed by the Canadian Arctic Resources Committee (CARC). Mr. Greig made the following points in his presentation:

- There are four major threats in which IA should play a role (e.g., biodiversity, climate change, resource depletion, population growth) and suggested these should guide how we should be thinking about IA
- Cumulative Effects Assessment (CEA) follows a set of processes including analysis of past conditions, detailed analyses (modeling) of current human activities and their effects, peer review of analyses and models, and publication and data-sharing. He noted that there is rarely any data-sharing and peer review needs to be by scientists.
- If you really want to understand what is going to happen to the system, you need to consider all human activities and natural processes that affect that affect an ecological end point not just the projects under review. Climate change is an excellent example of the need to consider all human activities and natural feedback processes. The response to climate change in terms of modeling, data sharing, and peer-review is a good example for how we should be considering cumulative effects assessment in IA.
- There is a role for IA assessors to incorporate predictions of climate change, made by climate scientists, in future scenarios of cumulative effects on environmental end points and on the project itself.
- That said, CEA is rarely done and if done, rarely done well! Regional assessments offer the potential to present information on the condition of the region that could enable CEA. The lack of information available to project assessors, is also due to the lack of sharing data and models among project assessors.

OAIA previous recommendations (2016, 2017)

- Mr. Wlodarczyk presented the history of OAIA's previous engagement and recommendations regarding the process of modernizing Ontario's *Environmental Assessment Act* (EAA).

- A number of improvements could be undertaken by the MECP that do not necessarily require amendments to the EAA, including promotion and enforcement of MECP adherence to timelines, reduction or elimination of insincere or unwarranted objections through well-developed provisions, ensure there are adequate resources available to MECP, Indigenous Peoples, proponents, review agencies, and practitioners (i.e. funding, seasoned staff with relevant, hands-on IA experience, etc.) in order to effectively participate in the IA process.
- Many issues, including sustainability, climate change, cumulative effects assessment, participant funding, and strategic environmental assessment, are no longer considered emerging issues, as they were considered in OAIA reports in 2016 and 2017, and need to be incorporated into IA practice and MECP guidance. Following this thinking, the panelists' presentations provide reasoning for the importance of Indigenous partnerships, regional impact assessments and cumulative impact assessments as it relates to the progression of climate change.

Common themes discussed in Webinar 2

- IA processes in Canada and Bill 197 being less than ideal for Indigenous community partnerships, collaboration and engagement. The impacts of the changes to Bill 197 on Indigenous Peoples will not be known until its implemented, however, streamlining the IA process will limit Indigenous participation and will likely result in conflict or judicial intervention.
- Consistent and sufficient resources to Indigenous communities and stakeholders, as well as the MECP to allow for a more comprehensive and environmentally- and sustainability-focused project IA process.
- Federal regional impact assessment process as it relates to the Ring of Fire region (located in Ontario's Far North that contains a significant deposit of minerals) and its implications on Indigenous community collaboration and engagement, cumulative impacts on the environment, and the ongoing social emergencies in the region (e.g. lack of basic community focused infrastructure such as safe drinking water and adequate housing).
- Collaborative work (i.e. analysis of past conditions, detailed analysis (modelling) of current cumulative effects, peer review of analyses and models, and publication/sharing of data and models) being conducted to investigate climate change threats and determine how they can be decreased sets an example for how environmental impact assessment should be conducted to preserve the environment while advancing development.

Question and Answer Session

Question: Are there any good examples of IA in Ontario that have addressed any of the visionary guidance you've outlined in your presentation?

Ms. Bean noted that there weren't any Ontario examples that came to mind. She provided other examples including the Voisey's Bay Mine and Mill Environmental Assessment in Newfoundland in the early 2000s. In this example, a Memorandum of Understanding (MOU) between the provincial and federal governments as well as the Innu Nation and the Inuit of Labrador was developed. The federal Review Panel stressed the importance of the community's consent and deliberately considered the mine's positive contributions to sustainability throughout the IA. On the other hand, the Panel only had the power to make recommendations and not all the recommendations were accepted by the federal government which had the authority to approve or reject the project. Another example is the NICO Project completed in the Northwest Territories within *Tłı̄chq* territory as part of the lands co-managed by the *Wek'èezhii* Land and Water Board. This project was completed under the *Mackenzie Valley Resource Management Act* (MVRMA). The *Tłı̄chq* had the legal authority to approve or reject the project and they also used their

influence to modify to the process to benefit their communities. This is one example of a braided assessment.

Question: In your presentation you mentioned “consistent and sufficient resources”, can you explain how “consistent and sufficient resources” relates to the effectiveness of EA in Ontario?

Ms. Bean explained that capacity was such an important aspect in the *Tłıchq* during the NICO Project. Having sufficient capacity afforded them the ability to participate consistently and meaningfully and allowed them to ultimately make informed decisions at the end of the project. Having human and financial resources is a core component of being able to collaborate effectively.

Question: There are lots of reasons why the regional assessment and the project level assessments need to communicate with each other and you present a compelling case around a potential model for governance for a regional assessment process; what do you think the key benefits would be for Ontario to become engaged in the regional assessment right now?

Professor Scott reiterated that it is critical to have a process that is credible and authoritative and that the communities and the region buy in to. This is the only way to get past the division and the threat of litigation and delay that has characterized the past decade of deliberation over the Ring of Fire. Ontario should be a partner jurisdiction in a regional assessment, however, there also needs to be an Indigenous governing authority as partner jurisdiction as well. Overall, a strong regional assessment process may take time, but it would allow for better planning, better decision making, and for the consideration of the longer term interests and betterment for all Ontarians.

Question: You discussed “the trajectory of the jurisprudence”. Can you describe what that trajectory is in your opinion and what the MECP should be paying attention to that needs to be incorporated into the modernization of impact assessment in Ontario?

Professor Scott identified the trajectory of the jurisprudence as the courts putting more definition on the scope of Indigenous governing authority and the rights are being expanded, which is only going to increase the possibility for communities to offer or withhold their consent to certain projects in their territories. For example, Bill 197 did not include greater flexibility on the part of MECP to extend timelines, for example, for communities that are unable to participate in consultation because of the pandemic. Some communities (e.g., Neskantaga First Nation) in the Ring of Fire region are unable to participate in the proposed road projects because there are social emergencies in addition to the pandemic. MECP’s response is that the timelines are legislated in the Act and because it’s proponent-driven they are unable to stop the process. However, Bill 197 amended the EAA and this could have included amending the deadline regulations towards more flexibility given COVID-19. From a constitutional perspective, MECP needs to revise timelines because the Crown holds the constitutional duty to consultation. If it can’t be fulfilled by the current regulations and the proponent-driven process, then those laws are unconstitutional.

Question: If you were across the table from the Minister and staff at MECP, what would you offer in terms of what needs to be considered as guidance for cumulative impacts in Ontario? Would that look different in the far north of Ontario versus the south?

Mr. Greig commented that what is needed to be done for cumulative effects assessment is not exclusive to Ontario, rather it is universal. There is cumulative effects assessment in Ontario but it doesn’t necessarily show up in IA practice. He mentioned assessment of projects associated with quarries and aggregates and their cumulative impacts on the water table had to be addressed in a collective way so it was a cumulative effects assessment. In terms of the northern Ontario and southern Ontario, the south has a larger human

footprint whereas the north hasn't had as much of an impact yet. When you're looking at cumulative effects assessment, you want to be doing exactly the same things, that is, looking at all of the potential pressures that would operate on the environment to assess what the potential impacts will be there. People often think of IA as being related specifically to projects, however, the ultimate focus of IA needs to be on the environmental endpoints that will be impacted by those projects (whether they are positive or negative and how they interact with each other). Cumulative effects analysis requires one to do an ecological assessment of the region, meaning what it is now and what it once was, and our Indigenous partners have a good sense of what the past conditions were because they are so close to the land; thus, Indigenous community collaboration is essential.

Question: You mentioned a model/tool used by the Canadian Arctic Resources Committee in the north for predicting and modelling cumulative effects. Can we get your opinion on the role of a quantitative, geographic, GIS-based models in the context of a northern Ontario regional assessment and as it relates to Indigenous knowledge?

Mr. Greig noted that each individual has a conceptual model of the environment that causes us to think of the environment in different ways (e.g. the environment is almost limitless or the environment is under pressure). However, when you take the data and try to build a simulation model to show how the system works, that's when you learn whether your conceptual model is accurate. If you can't build a model that simulates the way the system works, there is something in the system that you don't understand. Models that are wrong are incredibly useful because they tell you don't have it right.

Professor Scott offered that models are only as good as their inputs and assumptions. That is why the governance question is critical. If those inputs and assumptions are only based on Western world views of what matters, then they won't do anything for the people being impacted by the decision making in the region.

Ms. Bean added that exercise caution when considering Indigenous knowledge in things like models because that is where the failings of knowledge integration may arise; for example, using Indigenous knowledge to validate Western science or selecting the most convenient elements. Indigenous knowledge needs to be considered separate from Western science and considered as it is presented (e.g. orally, report, story, etc.).

Question: Using the example of braiding, how do you provide Indigenous communities with the ability to consent but not extend the same to other communities?

Ms. Bean commented that the concept of braiding stems from the history of colonialism in Canada and that Indigenous communities are distinct nations within Canada. Canada does have a legal fiduciary duty to Indigenous Peoples and so they have special rights that are both inherent and protected within the Canadian constitution. Recognizing Indigenous Peoples' right to consent is really recognizing their inherent right to self-determination and self-governance upon their traditional lands. In addition, this recognizes the special fiduciary relationship between the Crown and Indigenous Peoples, a relationship that is very distinct from the Crown's relationship with Canadians.

Professor Scott added that a community's ability to consent is a demand that the Environmental Justice Movement has been making for a long time. Now we're seeing it in the deep geological repositories. The nuclear waste management organization said the community has to be a willing and informed host.

Morally, if communities come to a full understanding of the cost and benefits associated with hosting a project, why is that not the case everywhere?

Question: Is there a proponent or writer of the regional impact assessment in the Ring of Fire now?

Professor Scott noted that the regional impact assessment is being conducted under the federal IAA. Therefore, the regional impact assessment will likely either be conducted by the Impact Assessment Agency of Canada (IAAC) by creating a committee to conduct the regional impact assessment, or, as some of us are hoping, the IAAC will enter into an agreement with partner jurisdictions and those will together form the proponents. These agreements are still under discussion.

Question: Does the current IAA allow for the government to pause IAs by proponents? Or is this being done in other ways?

Professor Scott commented that neither the federal nor the provincial acts allow for anyone but the proponent to pause an environmental assessment. As I said in my presentation, I'm questioning the constitutionality of these provisions. The duty to consult and accommodate is with the Crown and the Crown is supposed to uphold its honour in its dealings with Indigenous communities. If Indigenous communities are saying they need to stop because of crisis or pandemic, I don't see how they can use their legislation as a reasoning to continue because it would clearly be unconstitutional.

Question: What can we do as practitioners to advocate for having the project level assessments paused until the regional strategic environmental assessment is completed for Ring of Fire?

Professor Scott offered that we all may try to put our input into our law reform processes and that the more people we have continuing to say that 'it doesn't make sense to be proceeding with these individual assessments on these roads when a regional assessment has already been announced' the better. Mr. Wlodarczyk noted that the proponents for the road impact assessments are the First Nations themselves.

Mr. Wlodarczyk added that the OAIA is a mechanism for allowing people to speak and question these issues. As practitioners and members of the OAIA, we have a responsibility to make these types of views and diversity of views known to governments.

Question: Whose responsibility should it be to consider the broad GHG implications of many projects that each consider their own GHG impacts?

Mr. Greig commented that as a part of IA we need to think about potential effects of climate change (emissions analysis), all of the other stresses that arise from the project, and all the stresses that are also affecting other parts of the natural environment. We have to be looking at the consequences of climate change. The problem that we have is that we assume the future will be like the past, but that's not true. The past is no longer a predictor the future. We also need to be taking into account the impacts of climate change on the project itself. It's important to look at the prediction of what the emissions will be of a project. This data can be brought together with all of the other emissions data in order to get the big picture in terms of what we should do going forward.

Dr. Chetkiewicz added that we have a federal strategic environmental assessment for climate change that considers more broadly the question of climate change, that is, the ultimate cumulative effect. We need to ask the proponent to consider it within their project and the effect of climate change on their project. But we also need the broader picture, such as nationally how are we actually addressing our agreement to the Paris Agreement and the implications of decisions being made provincially, territorially and through

Indigenous governments about certain land uses and sectors that we know are contributing to climate change moving forward. I think the government has a really clear organizing and facilitating role, both nationally and provincially/territorially. Impact assessment has to be part of the solution in a very critical way and I would argue that we have some guidance in Ontario that is useful, but we can do better, including having a better understanding of what all the land uses in the different sectors are contributing to climate change and what decision are going to be made regarding proposed projects in these sectors (e.g. mines in the far north that are in intact peatland complexes that are important for carbon storage and sequestration).

Question: Given your point about need for increased mining, does Canada have the innovation pressures strong enough to lessen ecological impacts of mining?

Dr. Chetkiewicz commented that within Ontario there is a proposal to consider adding mining in our project list. Typically mining has been private sector and subject to voluntary agreements and it is the federal process that ensures mining goes through some approach, whether its cumulative effects or effects as it relates to the mine itself. The challenge continues to be who creates the threshold and what types of mines are to be included, however, all of these projects have impacts. Determining why something is included or excluded requires more critical thinking beyond the political conversation going on. I would put it back on communities to say what kinds of things need to be considered in an impact assessment before inviting this type of project in.

Professor Scott added that we need to figure out how these communities want to benefit from having these mines. In particular, Indigenous communities (and more specifically remote Indigenous communities), perhaps the innovation should come from a social/governance perspective rather than in a technical way.

Mr. Wlodarczyk added that the mining industry is becoming more innovative in how they power their facilities through renewable energy and a greater emphasis on electrification of their fleets and operations.

Question: How do you see EA process with respect to a 'positive contribution to sustainability'?

Mr. Wlodarczyk commented that all of us as IA practitioners need to make the IA process a positive contribution to sustainability. We need to make it our mission to that projects bring the best science and Indigenous Knowledge to bear on IA and make sure that projects that make a positive contribution to sustainability are approved.

Question: Why has the early phases of IA moved away from constraint mapping with direction from Indigenous communities?

Mr. Wlodarczyk commented that this is an evolution of IA; we are getting away from the technical and going towards a collaborative model. The more we work with Indigenous communities and stakeholders in developing collaborative decision making models, the better.

Mr. Greig added that if we are trying to balance both future developments and maintaining the environment in a sustainable condition, one of the most important things we can do is begin the environmental assessment process as part of the design of the project (i.e. concurrently beginning the environmental assessment and design process).

Conclusions

- Indigenous engagement under the current Ontario *Environmental Assessment Act* and the proposed modernized environmental assessment process is less than ideal. To begin to mitigate this, Indigenous communities must be recognized as equal partners alongside proponents and must be recognized as self-governed communities with the ability to provide or withhold consent as it relates to the approval of a project. To do so, consistent and sufficient resources must be accessible to Indigenous communities to allow for collaboration and meaningful engagement throughout the IA process and allow for well-informed decision making at the end of the project.
- The environment assessment process currently does not provide adequate emphasis on the need for regional impact assessments in environmentally valuable and sensitive areas and thus is not comprehensive. The involvement of major stakeholders (i.e. Indigenous communities and provincial/territorial/federal governments) is critical to facilitating the progression regional impact assessments that are credible and authoritative, technically sound and complete, and have the perspectives and goals of each party in mind.
- The current and proposed IA process excludes the importance of cumulative impact assessments as it relates to climate change. Currently, projects are viewed exclusively on their individual environmental, often biophysical, impacts to an area; when in actuality, this is not a true representation of the environmental impacts and climate change impacts.
- There is an important role for IA assessors to determine the positive or negative emissions that will result from a project and to provide that data to the scientists responsible for federal climate assessment and emissions reporting.

Recommendations

1. MECP should revise timeline regulations if the Crown cannot meet the duty to consult. This could include being able to pause individual project assessments to align with the regional assessment timing.
2. CEA requires a regional approach and a long temporal perspective, giving consideration to past, current, and future conditions, including climate change and human activities. Collaboration with Indigenous communities is an important way to better understand current baselines and past conditions.
3. CEA must encompass the range of the ecological end points (ecosystem component) affected by the project. Some species may have ranges beyond a particular watershed. Good examples of this are migratory caribou and fish species.
4. Adequate resources (e.g. funding, training, etc.) for Indigenous communities, the public, and stakeholders is needed to allow for collaboration and meaningful engagement and a fulsome understanding of the costs and benefits of a project in their region.
5. Build in flexible timelines/deadlines as it relates Indigenous community engagement in the IA process.
6. Recognize Indigenous rights to self-determination and endorse the right to Free, Prior and Informed Consent (FPIC).
7. Recognize Indigenous knowledge as inherent and not supplementary to Western science.
8. For the regional assessment to be credible and authoritative in the Ring of Fire it needs to be implemented in partnership with Ontario and First Nations.
9. Ensure positive sustainability contributions to the all aspects of the environment (i.e. social, cultural, environmental) are integrated in the IA process.

10. Governance is critical for impact assessment. Allow for Indigenous Knowledge and science in CEA analyses (e.g. quantitative modelling) to exist alongside each other to better inform the IA decision making process.

Webinar Resources:

- *Climate Change and Project EA: What's Useful?* A presentation by Lorne Greig <https://bit.ly/39RJdei>
- *Implementing a Regional, Indigenous-Led and Sustainability-Informed Impact Assessment in Ontario's Ring of Fire* <https://bit.ly/3qEfMSA>
- *Synthesis at the Nexus of Sustainability Assessment, Regional/Strategic Assessment and Indigenous Partnerships* <https://bit.ly/3qAmnOO>
- *The Art and Science of Cumulative Effects Assessment. A 2017 OAIA presentation by Lorne Greig* <https://bit.ly/3qyH74I>
- *The Impotence of Cumulative Effects Assessment in Canada: Ailments and Ideas for Redeployment* <https://bit.ly/36QcmVc>
- *Collaborative Impact Assessment: Towards Braiding* <https://bit.ly/36U4u4M>

2020 Webinar Series

The 2020 Ontario Association for Impact Assessment (OAIA) conference was being replaced with a series of webinars on **Modernizing Ontario's Environmental Assessment Legislation – The Past, Present and Future**. The webinar series is in response to Ontario's recent proposals to modernize its *Environmental Assessment Act* (EAA). The series examined Ontario's assessment laws and policies through time, lessons learned, and recommendations for the future. Expert panelists focused on EAA, specifically, history and trends, what is enacted, what is missing and needed, and what is next.

Webinars were held from **noon to 2 pm on November 5, 12, and 19, 2020**

For more information visit the OAIA website at <https://oaia.on.ca>. If you have any suggestions for next year's conference theme, please contact us at info@oaia.on.ca.

We look forward to welcoming your participation in this year's OAIA webinar series.



Schedule D: Webinar 3

What is Next?¹

Thursday, November 19, 2020 at 12:00 pm to 2:00 pm EST

Facilitators: Sandy Nairn and Anneliese Grieve

Panelists: Paul Norris, Ken Dion, Katherine Kung, Ian Dobrindt

Rapporteur: Peter Brown

Webinar Highlights:

Anneliese introduced the webinar by reviewing that the first in the series of three was reflective, the second was aspirational and this, the third webinar in the series is pragmatic – looking at what’s next. This webinar considered elements of EA modernization (Comprehensive Project List Regulation, Streamlined/Class and Sectoral EAs) through panel presentations and discussion. The presentations focused on what the changes to the EA Act and the Streamlined/Class EAs mean to these sectors.

The panel consisted of:

- Paul Norris, Ontario Waterpower Association (OWA) - Energy/Power
- Katherine Kung, WSP - Transportation/Roads
- Ian Dobrindt, GHD - Water/Wastewater
- Ken Dion, Waterfront Toronto - City Building

Energy/Power Sector

Paul provided context about why the EA Act is important to OWA and the history of the Waterpower Class EA. He pointed out that a number of different EA regulations and/or Class EAs may apply to electricity projects. He raised the idea of applying strategic EA to energy system planning.

All Class EA holders are currently reviewing their Class EAs, mainly around streamlining and the categorization of projects related to risk. Adding clarity to how projects are screened, which ones are exempt, etc. is the only aspect of the Waterpower Class EA being proposed for changes. The proposed changes to the Hydro One Minor Transmissions Facilities Class EA are largely administrative.

Generally, Class EA holders and proponents are supportive of EA modernization, and are also interested in responsible resource management and public accountability.

Paul pointed out that current and proposed EA thresholds in Ontario do not necessary align with federal thresholds, and that generally Ontario is maintaining the same thresholds as in Ontario Regulation 116/01.

¹ <https://oaia.on.ca/what-is-next/>

The waterpower industry perspective on proposed changes to Waterpower Class EA can be summarized as:

Pros

- Creates efficiencies and reduce fixed costs
- Builds on Ontario Regulation 116/01
- Builds on about 20 years of EA experience (including private sector)

Cons

- Different lists/thresholds than Canada (e.g., renewables)
- Raises questions about federal substitution
- Uncertainty about future of Class EAs in general

Question: How might a Strategic Environmental Assessment (SEA) for climate change and the role of coal for example emerge without language in the EA Act that enables SEA. Are there examples where this has happened without requiring amendments to the EA Act?

Paul noted that electricity system planning doesn't always go through EA. Policy direction has not been subject to EA in the past. Reliability and cost-effectiveness tend to drive electricity system planning. Perhaps a SEA would have led to a different outcome that could have included eliminating coal, but perhaps not. Ontario's long-term energy planning has considered sustainability, environmental cost accounting, etc., but was not labelled an EA.

Question: How are cumulative effects assessed in both existing hydro projects and in expansion or renewal projects? How would you respond to potential concerns of project splitting to avoid triggering the project list?

Paul responded that they would not split a hydro project to avoid regulatory thresholds. Generally, the project is sited where the resource is and it is difficult to piecemeal hydro projects.

Transportation/Roads

Katherine provided an overview of the proposed changes to how transportation/roads projects will be considered under the EA Act, including changes to MTO's Class EA and the Municipal Class EA.

Katherine pointed out that very few road projects will require a Comprehensive EA. She also noted that while there is some language related to cumulative effects, climate change and sustainability, these issues are largely omitted from the proposed changes. The changes are largely focused on re-classifying projects based on environmental risk.

Question: What is considered by a "significant change" to the previously approved project?

Katherine responded that this still seems vague and poorly-defined in the proposed changes to the Class EA.

Water/Wastewater

Ian provided an overview of the water and wastewater sector, including how they Municipal Class EA applies to these projects. He then provided a summary of the proposed changes related to water and wastewater. He pointed out that the structure and requirements in the Class EA remain unchanged, the focus of the update is on the categorization of projects and thresholds. Generally, the changes will require

less assessment for some project types. He also noted a potential increased reliance on downstream permits/approvals (e.g., environmental compliance approvals) and construction notices. The water/wastewater industry perspective of the proposed changes to the Municipal Class EA could be summarized as:

Pros

- Re-categorizations generally make sense
- Additional notification requirements for projects going from A to A+
- Simplified thresholds/classifications

Cons

- Concerns about 'increase in rated capacity' as a threshold
- Over-reliance on construction notices instead of consultation

Ian suggested that more relevant criteria could be considered for thresholds such as sensitive land uses and adverse effects such as odor.

Question: What does the 50% threshold come from? Is it an ecological, social or economic based threshold? Is there any scientific basis for this?

Ian responded that the number refers to the rated technical capacity of the infrastructure and is arbitrary as a threshold for environmental effects.

City Building

Ken summarized some objectives-based city-building Individual and Class EA projects. He pointed out that Conservation Authorities have their own Class EA, and they often partner (e.g., with municipalities) and participate in Municipal Class EAs, Individual EAs, etc.

The proposed changes to the Conservation Authority Class EA comprise minor changes to classifications, including pre-approved activities, and other clarifications.

The Municipal Class EA (MCEA) changes make the schedules, exemptions, etc. clearer (e.g., Master Plans). Some climate change 'weighting' considerations were added.

Ken offered some recommendations for different project types:

- Major flood control – Opportunities for implementation of major flood protection projects should continue to be considered by Project proponents using the Conservation Ontario (CO) and MCEA Class EA procedures, with the option to consider Comprehensive EA if it is deemed appropriate (e.g., Don Mouth Naturalization and Port Lands Flood Protection)
- Lake fill – the reason and existing conditions should dictate EA approach for use of lake fill. Projects involving lake fill for conservation, environmental or mitigation of risk, or limited scope filling in highly degraded habitats (combined with substantial habitat compensation) should continue to be implemented under the Conservation Ontario and MCEA procedures. Large-scale lake fill areas for the advancement of industrial or infrastructure uses, particularly where the ecological and physical lacustrine processes are well-functioning and would be faced with negative impacts, should be conducted under the Comprehensive EA process.

- Integrate Master Plan EAs with Planning Act – it seems like the changes to the MCEA raise the possibility of a project Class EA being caught in a Local Planning Appeal Tribunal (LPAT) process even after approval. This suggests that the Planning Act may take a primary role over the EA Act. Is this an intended outcome?

Question: Can you give us a sense of how consultation and engagement with Indigenous communities occurs in the project examples you provided?

Ken responded that proponents identify Indigenous communities based on the geography and potential impacts of a project, and work with MECP to develop a list of communities to be consulted for EA purposes. The Crown may have a duty to consult and typically delegates procedural aspects of that to proponents. Proponents also have statutory consultation requirements as part of an EA. With respect to these project examples in the Greater Toronto Area, there was significant consultation with the Mississaugas of the Credit First Nation, as well as with First Nations signatories to the Williams Treaties and the Huron Wendat. There has also been engagement with urban Indigenous service providers. For these projects we typically provide notification, offer meetings with staff and/or chief and council, participate in committees, provide tours for awareness and offer participation in some field programs (e.g., archaeology).

Question and Answer Session

Question: What was the rationale behind removing cost thresholds? What was the original logic for including cost to begin with?

It was likely included as a simple threshold, but is being removed because it is not necessarily indicative of environmental risk.

Question: Do you feel as though the Issues Resolution Process is an adequate replacement to bump-up?

It makes sense to avoid frivolous requests, but the changes may seem too limited (requests will only be considered if related to impacts on Aboriginal or treaty rights or provincial interest). An issues resolution process sounds good in theory, but we would have to see how it works. The Waterpower Class EA has an embedded issues resolution process. It is up to proponents and practitioners to make it work.

A participant in the webinar commented that having been involved in both an issue resolution process as well as a Part II order process, they agreed that the dispute resolution process was more effective and time and cost efficient.

Question: Can you expand on the shift of schedules for river/creek crossings?

Generally, the shift is downwards (fewer requirements for some project types), with some new project types being exempt. Open-cutting of water crossings requires more study than trenchless, but this is somewhat moot as most watercourse crossings are trenchless these days anyway.

Question: Any word on the proposed replacement of the class EAs with another process?

No official word, but we are starting to think about what the future holds. For example, should an integrated streamlined EA process treat private and public-sector proponents the same? From the OWA's perspective, they have been involved in private sector EA for 20 years. It makes sense to have a uniform and comprehensive approach to assessments, regardless of proponent, with consistent thresholds. Elements of what has learned to work or not could be built into a new process. The playing field should be

level for private and public sector proponents. Perhaps in some scenarios public sector proponents should be required to consider more alternatives than the private sector.

Question: Are the changes to the Class/Streamlined EAs considering the kinds of projects we will likely be seeing in 15 or 20 years?

- Water/wastewater projects likely will not change substantially. Transportation/roads may need to consider automated vehicles, for example. The electricity sector continues to trend towards market-based approaches. In the renewable energy approval and procurement program, there was a trend towards Indigenous community participation, including equity. Projects in the north are increasingly Indigenous-led.
- There will at least continue to be increased expectation for Indigenous participation, which often starts at the EA phase of project development. Examples of increasing participation by Indigenous communities in EA and post-EA processes have been increasing in the Greater Toronto Area, particularly with some of our larger projects involving habitat enhancement and public realm such as the Don Mouth Naturalization and Port Lands Flood Protection Project, and the Jim Tovey Waterfront Conservation Project.
- Extensive efforts were made to encourage Indigenous communities to provide input regarding issues related to Indigenous Knowledge, culture, history and interests moving forward. Waterfront Toronto, for example, has:
 - entered an agreement with the Mississaugas of the Credit First Nation to more fully participate in planning efforts along the Toronto Waterfront, and
 - retained an Indigenous consultancy (MinoKamik) to assist their designers to lead expansive Indigenous engagement efforts with a number of Indigenous communities and urban Indigenous service and community groups, to inform the Port Lands Public Realm design.
- While the incorporation of Indigenous Knowledge may generally remain a piece missing from EA in Ontario, there are growing examples that this is changing.

Question: Looking to the future and COVID-19, could there be further changes to EA to facilitate active transportation and recreation?

It should be helpful that thresholds are going to be more related to environmental impacts rather than project costs. It would be helpful to have more integration of active transportation, e.g., ‘complete streets’ in urban planning, also seems to be a trend.

Question: Should thresholds for the Comprehensive Project List be the same or lower than the federal thresholds?

From the water/wastewater perspective, having the same thresholds as Canada suggests that requirements under Ontario’s EA Act may be duplicative, so we should consider assessing impacts that may not be covered by the federal process. The waterpower sector has successfully coordinated federal and provincial requirements.

For water/wastewater and transportation/roads the provincial and federal thresholds are not well aligned and it can be difficult to harmonize the processes.

It was noted that *substitution* seems more likely if the thresholds and requirements are aligned. It was also noted that using an objectives-based EA approach can help align federal and provincial requirements,

although the MTO Class EA, which was principles-based, is being replaced by something likely more prescriptive.

Conclusions

General Comments on Class EAs

- Across all sectors discussed (waterpower, transportation/roads, water/wastewater, city-building) proposed changes to Class EAs are generally related to reclassifying project types according to environmental risk, with a general trend of less requirement for projects with lower risks.
- Generally, it was felt that some reclassifications and efficiencies make sense, and that generally clarification to the categorization of project types, is an improvement in the proposed Class EA changes.
- Concerns were related to making sure the thresholds and requirements are clear, based on likely impacts to the environment, and consistent across sectors and with other jurisdictions (e.g., with Canada, as applicable).
- Concerns were also noted about a potential increased reliance on downstream permits/approvals (e.g., environmental compliance approvals) and construction notices.
- Frivolous bump-up requests should be discouraged, but the changes to the Class EA Part II Order process (requests will only be considered if related to impacts on Aboriginal or treaty rights or provincial interest) may be too limited.
- An issues resolution process sounds good in theory, but it is largely up to proponents and practitioners to make it work.
- A dispute resolution process could be more effective and time/cost efficient than a Part II Order or Bump Up Request.

Sector-based Recommendations for Comprehensive Project List

Electricity

Both the Class EA Amendments and the proposed Project List build on the foundation of Ontario Regulation 116/01. The electricity industry has 20 years of provincial EA application to the private sector. However, it remains unclear from MECP proposals how the new streamlined process will handle private sector projects, assuming MECP will replace the Guide to EA Requirements for Electricity Sector Projects. The eventual elimination of Class EAs will reduce a proponent's (e.g. OWA) "ownership" of continuous improvement in EA practice.

- Generation projects are missing from the provincial list, if "harmonization" with the federal process is an objective of the MECP Project List approach.
- There are projects (e.g. waterpower) for which "substitution" will be required, if efficiency and effectiveness is an objective of the current MECP proposal.

Transportation

Rather than aligning linear thresholds with the IAA (e.g., 50 km in length), the requirement for Comprehensive EAs should be lower than the federal limits because there is potential for significant impacts and new highway or expressways are typically < 75 km.

- MECP's current proposal needs to include triggers and thresholds for proposed roads that are not freeways/expressways (e.g. all-season roads in the far north) which are more common in northern Ontario and also addressed under the federal Impact Assessment Act (IAA).
- MECP should consider other kinds of triggers as a length-based trigger does not allow for unique geographic contexts, particularly where shorter highways generate higher risk of impacts and public

concern because of the environment they are travelling through. For example, the Teston Road extension between Keele Street and Dufferin Street is approximately 2 km in length, but was recommended by MECP to proceed under an Individual Environmental assessment given the potential impact on the environmentally-sensitive East Don River Valley as well as cost implications with potential impacts to the former Keele Valley landfill.

- OAIA recommends a lower threshold if linear thresholds are determined to be required. Objective criteria and evidence for the threshold or trigger values must be provided.
- The proposed 75 km threshold for municipal expressways is moot as there are currently no municipal expressways of that length. Objective criteria and evidence must be provided to support threshold or trigger values for municipal expressways.

Conservation

- MECP should clarify changes to Ontario Regulation 334 as the limits set out in this regulation capture most complex waterfront projects such as the Don Mouth Naturalization Project (DMNP), the Lakeview Waterfront Connection and the Scarborough Waterfront Project.
- Complex flood control projects should continue to be considered using the MCEA procedures (such as the Broadview Eastern Flood Protection or Downtown Brampton Flood Protection Projects). However, proponents should continue to have the option to choose to incorporate the Comprehensive EA procedures, if it is deemed appropriate for any given Conservation Project.
- Amend the Conservation Ontario (CO) Class EA to specifically include Lake Fill alternatives that have the dual objectives of “remedial erosion and flood control” and “providing for passive public use of riverine or shoreline areas”. For example, projects including the Lakeview Waterfront Connection, Scarborough Waterfront, Port Union and Mimico Waterfront Linear Park included shoreline and slope stability considerations, but also greatly improved local natural ecosystems and provided public access to the waterfront, contributing to public health and wellbeing. These projects could have been conducted under the CO Class EA.
- MECP should continue to allow limited Lake Fill in heavily degraded aquatic habitats (due to past industrialization and/or urbanization), for purposes of Municipal Infrastructure retrofits/upgrades under the Municipal Class EA (MCEA), subject to EA commitments for aquatic habitat enhancements as compensation for disturbance of existing highly degraded habitat conditions.
- Projects that involve Lake Fill in expansive, relatively undisturbed areas for new industrial, commercial, or urban uses should be subject to Comprehensive EA.

OAIA agrees with the MECP suggestion that Conservation Projects garner public interest, but this interest is often one of public support (i.e., Don Mouth Naturalization and Port Lands Flood Protection Project). Public opposition is typically less than that expressed for a waste or power generation project.

OAIA supports the inclusion of Conservation Projects involving Major Flood Control Projects (such as the Don Mouth Naturalization and Port Lands Flood Protection Project) be included on the Projects List for Comprehensive EA. Individual EA (Comprehensive EA) procedures provided some additional flexibility in defining an innovative “Objectives-Based” evaluation of alternatives process and provided the added surety of an approved EA Terms of Reference to better withstand changes in political climate for the DMNP EA, during longer-term planning processes.

2020 Webinar Series

The 2020 Ontario Association for Impact Assessment (OAIA) conference was being replaced with a series of webinars on **Modernizing Ontario's Environmental Assessment Legislation – The Past, Present and Future**. The webinar series is in response to Ontario's recent proposals to modernize its *Environmental Assessment Act* (EAA). The series examined Ontario's assessment laws and policies through time, lessons learned, and recommendations for the future. Expert panelists focussed on EAA, specifically, history and trends, what is enacted, what is missing and needed, and what is next.

Webinars were held from **noon to 2 pm on November 5, 12, and 19, 2020**

For more information visit the OAIA website at <https://oia.on.ca>. If you have any suggestions for next year's conference theme, please contact us at info@oia.on.ca.

We look forward to welcoming your participation in this year's OAIA webinar series.



SCHEDULE E

OAIA Recommendations on the Proposed Project List for comprehensive environmental assessments under the Environmental Assessment Act (EAA) ERO number: 019-2377

ELECTRICITY PROJECTS

- **Recommendation 1.** Generation projects are missing from the provincial list, if “harmonization” with the federal process is an objective of the MECP Project List approach.
- **Recommendation 2.** There are projects (e.g. waterpower) for which “substitution” will be required, if efficiency and effectiveness is an objective of the current MECP proposal.

Both the Class EA Amendments and the proposed Project List build on the foundation of Ontario Regulation 116/01. The electricity industry has 20 years of provincial EA application to the private sector. However, it remains unclear from MECP proposals how the new streamlined process will handle private sector projects, assuming MECP will replace the Guide to EA Requirements for Electricity Sector Projects. The eventual elimination of Class EAs will reduce a proponent’s (e.g. OWA) “ownership” of continuous improvement in EA practice.

WASTE MANAGEMENT PROJECTS

- **Recommendation 3.** The government amendment requiring proponents of new, large landfills to obtain support from host municipalities and adjacent municipalities within a 3.5 km distance is not based on experience or evidence. Any distance thresholds or triggers should be objective and supported by evidence.

Based on the current proposal, landfills will not be sited in suitable physical locations in compliance with Ontario’s own modern landfill design standards, but rather based on political and perhaps, monetary influence that is not linked to impacts and benefits of proposed projects.

TRANSPORTATION PROJECTS

- **Recommendation 4.** MECP’s current proposal needs to include triggers and thresholds for proposed roads that are not freeways/expressways (e.g. all-season roads in the far north) which are more common in northern Ontario and also addressed under the federal Impact Assessment Act (IAA).
- **Recommendation 5.** MECP should consider other kinds of triggers as a length-based trigger does not allow for unique geographic contexts, particularly where shorter highways generate higher risk of impacts and public concern because of the environment they are travelling through. For example, the Teston Road extension between Keele Street and Dufferin Street is approximately 2 km in length, but was recommended by MECP to proceed under an Individual Environmental assessment given the potential impact on the environmentally-sensitive East Don River Valley as well as cost implications with potential impacts to the former Keele Valley landfill.
- **Recommendation 6.** OAIA recommends a lower threshold if linear thresholds are determined to be required. Objective criteria and evidence for the threshold or trigger values must be provided.
- **Recommendation 7.** The proposed 75 km threshold for municipal expressways is moot as there are currently no municipal expressways of that length. Objective criteria and evidence must be provided to support threshold or trigger values for municipal expressways.

SCHEDULE E

Rather than aligning linear thresholds with the IAA (e.g., 50 km in length), the requirement for Comprehensive EAs should be lower than the federal limits because there is potential for significant impacts and new highway or expressways are typically < 75 km.

CONSERVATION PROJECTS

- **Recommendation 8.** MECP should clarify changes to Ontario Regulation 334 as the limits set out in this regulation capture most complex waterfront projects such as the Don Mouth Naturalization Project, the Lakeview Waterfront Connection and the Scarborough Waterfront Project.
- **Recommendation 9.** Complex flood control projects should continue to be considered using the MCEA procedures (such as the Broadview Eastern Flood Protection or Downtown Brampton Flood Protection Projects). However, proponents should continue to have the option to choose to incorporate the Comprehensive EA procedures, if it is deemed appropriate for any given Conservation Project.
- **Recommendation 10.** Amend the Conservation Ontario (CO) Class EA to specifically include Lake Fill alternatives that have the dual objectives of “remedial erosion and flood control” and “providing for passive public use of riverine or shoreline areas”. For example, projects including the Lakeview Waterfront Connection, Scarborough Waterfront, Port Union and Mimico Waterfront Linear Park included shoreline and slope stability considerations, but also greatly improved local natural ecosystems and provided public access to the waterfront, contributing to public health and well-being. These projects could have been conducted under the CO Class EA.
- **Recommendation 11.** MECP should continue to allow limited Lake Fill in heavily degraded aquatic habitats (due to past industrialization and/or urbanization), for purposes of Municipal Infrastructure retrofits/upgrades under the Municipal Class EA (MCEA), subject to EA commitments for aquatic habitat enhancements as compensation for disturbance of existing highly degraded habitat conditions
- **Recommendation 12.** Projects that involve Lake Fill in expansive, relatively undisturbed areas for new industrial, commercial, or urban uses should be subject to Comprehensive EA.

OAI agrees with the MECP suggestion that Conservation Projects garner public interest, but this interest is often one of public support (i.e., Don Mouth Naturalization and Port Lands Flood Protection Project). Public opposition is typically less than that expressed for a waste or power generation project.

OAI supports the inclusion of Conservation Projects involving Major Flood Control Projects (such as the Don Mouth Naturalization and Port Lands Flood Protection Project) be included on the Projects List for Comprehensive EA. Individual EA (Comprehensive EA) procedures provided some additional flexibility in defining an innovative “Objectives-Based” evaluation of alternatives process and provided the added surety of an approved EA Terms of Reference to better withstand changes in political climate for the DMNP EA, during longer-term planning processes.

RAILWAY LINES

OAI suggests MECP provide more objective criteria and evidence for the threshold or trigger proposals for railway lines.

SCHEDULE E

MINING

- **Recommendation 13.** MECP include all mining projects on the provincial Project List along the lines of the federal Project List, but with lower thresholds to cover regionally significant projects, and not just nationally significant projects.
- **Recommendation 14.** There should be a federal/provincial accord to avoid duplication and ensure one body of evidence supports two or more processes on mining projects.

OAIA anticipates that mining projects may also have to respond to an Indigenous assessment process and there must be clarity on how to avoid duplication and ensure adequate assessment of mining projects moving forward.

STRATEGIC & REGIONAL EAs

- **Recommendation 15.** Expand the Project List to include strategic EAs and regional EAs.

Document #: 1857315